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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,154	02/03/2004	Martin Woodbury	3255	1885

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EXAMINER

HAYES, BRET C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,154

Applicant(s)

WOODBURY, MARTIN

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 2,4,6-10,12,14 and 16-19 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08 JUL 04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: **231** close range sight assembly. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Observations

2. Claims 2, 3, 12 and 13, line 1 of each, "are" would apparently be better said as --is--, since 'plurality' is a singular noun; and claim 11, line 1, "by means of an" should simply be --by an-- to avoid any unintentional 'means plus function' type interpretations. These observations need **NOT** be acted upon--examiner is merely pointing them out for Applicant's edification.

Claim Objections

3. Claims 2, 4, 6 – 10, 12, 14 and 16 – 19 are objected to because of the following informalities.

4. Claims 2 and 12 recite the limitation "the pivot arm" in lines 4 and 6 of each (2X each). There is insufficient antecedent basis for these limitations in the claims. The recitations should be --the pivotal arm--.

5. Claims 4 and 14, line 1 of each, remove "a" from "there are a two".

6. Claims 6, 8 – 10, 16, 18 and 19, it has been held that the recitation that an element is "adapted to" perform, or "adapted for" performing, a function is not a positive limitation but only requires the ability to so perform and it does not constitute a limitation in any patentable sense (*In re Hutchinson*, 69 USPQ 138). Further, claims 6 and 16 recite the limitation "said acute angles" in lines 4 of each. There is insufficient antecedent basis for these limitations in the claims. As only "*an* acute angle" has previously been recited in the claims, a plurality of angles has not yet been defined.

7. Claims 7 and 17, lines 1 of each, "the mechanism" is unclear as mechanisms for elevation adjustment, windage adjustment and to lock have been previously recited. Examiner presumes this mechanism to be the mechanism to lock the pivotal arm as recited in claim 6, and further suggests amending claim 6 to recite --a locking mechanism to lock-- and subsequently referring to the mechanism in any dependent claim as --the locking mechanism-- or --said locking mechanism--, for clarity.

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8. Claims 8, 9, 18 and 19 recite the limitation "said separate windage adjustment" in lines 1 of each. There is insufficient antecedent basis for this limitation in the claims. The structure is recited in the respective base claim as a mechanism.

9. Claim 10, line 13, "above distal end above" is believed to intend, and to be better understood as, --above a distal end of--. Further, claim 10 recites the limitation "the total height" in line 13. There is insufficient antecedent basis for this limitation in the claim. No height has yet been recited.

Appropriate correction is required.

Allowable Subject Matter

10. Claims 1 – 19 are allowed.

11. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, as in US Patent No. 1,715,203 to Loomis, discloses a plurality of sight members 19, 19' including a windage adjustment mechanism, *inter alia*, 25, 28, and an elevation adjustment mechanism, *inter alia*, 30 and 31. However, the prior art of record neither discloses nor fairly teaches the combination including separate elevation adjustment and windage adjustment mechanisms for each sight member as claimed.

12. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

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Conclusion

13. This application is in condition for allowance except for the preceding formal matters.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

1/17/05


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER